

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ISIDORO SAUCEDA,)
)
)
Movant,)
)
)
v.) No. 4:17CV1510 HEA
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent,)

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on the motion of Isidoro Saucedo to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion appears to be barred by the limitations period. As a result, the Court will order movant to show cause why it should not be summarily dismissed.

On September 14, 2015, movant pled guilty to conspiracy to distribute and possession with intent to distribute methamphetamine. *United States v. Saucedo*, No. 4:14-CR-374 HEA. On January 13, 2016, the Court sentenced him to 108 months' imprisonment. Movant did not appeal.

Movant filed the instant motion on May 1, 2017, which is the date he placed it in the institution's mail system. He argues that counsel was ineffective for failing to obtain a downward departure. He recognizes that his motion is untimely, but he requests equitable tolling on the basis that his counsel told him he would pursue relief after the sentencing hearing. Furthermore, he does not speak or read English, and so, he claims he did not understand the proceedings or what rights he had forfeited.

Under the doctrine of equitable tolling, the AEDPA's statutory limitations period may be tolled if a petitioner can show that (1) he has been diligently pursuing his rights and (2) an extraordinary circumstance stood in his way. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Equitable tolling is a flexible procedure that involves both recognition of the role of precedent and an "awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case." *Id.* at 649-50.

Movant must show cause why this action should not be dismissed as untimely. In arguing for equitable tolling, he must demonstrate how he diligently pursued his rights and what extraordinary circumstance prevented him from filing this action in a timely manner. Movant must respond to the Court within twenty-one days from the date of this Order.

Accordingly,

IT IS HEREBY ORDERED that movant must show cause, no later than twenty-one (21) days from the date of this Order, why this action should not be dismissed as untimely.

IT IS FURTHER ORDERED that if movant does not comply with this Order, the Court will dismiss this action without further proceedings.

Dated this 12th day of July, 2017



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE